

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**RONALD MANFREDI,  
RESPONDENT  
vs.**

**BLUE CROSS AND BLUE SHIELD OF KANSAS CITY, et al.,  
APPELLANT**

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DOCKET NUMBER WD71150

DATE: FEBRUARY 22, 2010

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Appeal from:

Jackson County Circuit Court  
The Honorable William Stephen Nixon, Judge

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Appellate Judges:

Court En Banc: Lisa White Hardwick, C.J., James M. Smart, Jr., Joseph M. Ellis, Victor C. Howard, Thomas H. Newton, James E. Welsh, Alok Ahuja, Mark D. Pfeiffer, Karen King Mitchell, Cynthia L. Martin, and Gary D. Witt, JJ.

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Attorneys:

Rex A. Sharp, for Respondent

William E. Hanna, for Appellant

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## **MISSOURI APPELLATE COURT OPINION SUMMARY**

### **MISSOURI COURT OF APPEALS WESTERN DISTRICT**

**RONALD MANFREDI, RESPONDENT**

**v.**

**BLUE CROSS AND BLUE SHIELD OF KANSAS CITY, et al., APPELLANT**

WD71150

Jackson County, Missouri

Before Court En Banc: Lisa White Hardwick, Chief Judge, James M. Smart, Jr., Joseph M. Ellis, Victor C. Howard, Thomas H. Newton, James E. Welsh, Alok Ahuja, Mark D. Pfeiffer, Karen King Mitchell, Cynthia L. Martin, and Gary D. Witt, JJ.

Blue Cross and Blue Shield of Kansas City and its affiliates (collectively referred to as "BCBS") bring this interlocutory appeal challenging the denial of its motion to compel arbitration in an action for declaratory judgment and injunctive relief brought by Dr. Ronald Manfredi in the Circuit Court of Jackson County. BCBS argues that the court erred in determining that the arbitration clause at issue is unconscionable, in invalidating the entire arbitration provision rather than severing the offending provisions, and in finding the BCBS had waived arbitration.

**AFFIRMED.**

**The Court En Banc holds:**

- (1) In assessing the scope of an arbitration agreement, in addition to the general agreement to arbitrate, the court must look to any exclusions and exceptions contained in the agreement.
- (2) The provision of the arbitration agreement precluding the arbitration panel from disturbing any decision or determination committed to the discretion or medical judgment of either party served to exclude disputes involving discretion or medical judgment from scope of the arbitration agreement.
- (3) Aspects of procedural unconscionability were present where the agreement was presented on a take-it-or-leave-it basis, a standardized form was utilized, the terms were non-negotiable, BCBS had considerably more bargaining power, and Dr. Manfredi had no reasonable option aside from accepting the agreement.
- (4) Aspects of substantive unconscionability were present where the provisions of the agreement granted BCBS unfettered discretion to unilaterally create, control, and alter the arbitration process; the general agreement to arbitrate was purely illusory with regard to disputes involving discretion or medical judgment; and the arbitrators were precluded from awarding consequential, special, punitive, or exemplary damages.

- (5) Considered together, as they must be, the aspects of procedural and substantive unconscionability present herein establish that the arbitration agreement was generally unconscionable.
- (6) The trial court did not err in failing to sever the unconscionable provisions of the arbitration agreement where, under the totality of the circumstances, the arbitration provision as a whole was unconscionable.

**Opinion by: Joseph M. Ellis, Judge**

Date: February 22, 2011

**Concurring Opinion by Judge James E. Welsh:**

The author concurs in the result but writes separately to state that pursuant to a provision in the parties' Participation and Network Agreements, the present dispute falls outside the scope of the parties' agreement to arbitrate. Hence, affirmance is required, and any discussion of the unconscionability of the arbitration agreement is unnecessary.

**Concurring Opinion by Judge Alok Ahuja:**

The author concurs in the result for the reasons stated in Judge Welsh's concurring opinion. The author also notes that, even if the prohibition on disturbing decisions committed to the medical judgment or discretion of the parties is interpreted as a limitation on the arbitrators' remedial authority rather than a limitation on the scope of arbitrable disputes, the result would be the same. A provision which wholly prevents the arbitrators from resolving disputes which go to the heart of the parties' relationship would be substantively unconscionable and unenforceable, because it would have the effect of immunizing Blue Cross from liability for its bad-faith exercise of its medical judgment or discretion.

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Howard, Newton, Pfeiffer, Martin, and Witt, JJ., concur  
Welsh, J. concurs in separate concurring opinion filed, in which Hardwick, C.J., Smart, and Mitchell, JJ., concur  
Ahuja, J. concurs in separate concurring opinion filed.

<b>This summary is <i>UNOFFICIAL</i> and should not be quoted or cited.</b>
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